

**UNITED STATES DISTRICT COURT**

## **EASTERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA  
*versus*  
ASHLEY RHEA

## **MEMORANDUM AND ORDER**

Pending before the court is Defendant Ashley Rhea’s (“Rhea”) *pro se* Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A) (Compassionate Release) (#407) seeking early release from prison filed on May 2, 2023. After considering the motion, the record, and the applicable law, the court is of the opinion that the motion should be dismissed.

## I. Background

On April 6, 2022, a grand jury in the Eastern District of Texas, Beaumont Division, returned a three-count Second Superseding Indictment charging Rhea in Count One with Conspiracy, in violation of 18 U.S.C. § 371; in Count Two with Trafficking in Drugs with Counterfeit Mark, in violation of 18 U.S.C. § 2320(a)(4); and in Count Three with Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. § 1956(h). On August 11, 2022, Rhea pleaded guilty to Count One pursuant to a written, non-binding plea agreement. On February 16, 2023, the court sentenced Rhea to 60 months' imprisonment, to be followed by a 3-year term of supervised release.

In her motion, Rhea seeks early release from imprisonment to care for her mother whom she claims is in need of a full-time caregiver due to her mother's recently suffering strokes that have caused her to experience memory loss. Rhea is currently housed at Federal Prison Camp

Bryan (“FPC Bryan”), located in Bryan, Texas, and her projected release date is September 25, 2026.

II. Analysis

A. Controlling Law

On December 21, 2018, former President Trump signed the First Step Act of 2018 into law. *See First Step Act of 2018*, Pub. L. No. 115-391, 132 Stat. 5194. The Act, in part, amended 18 U.S.C. § 3582(c), which gives the court discretion, in certain circumstances, to reduce a defendant’s term of imprisonment:

(A) the court, upon motion of the Director of the Bureau of Prisons (“BOP”), or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

- (i) extraordinary and compelling reasons warrant such a reduction; or
- (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the [BOP] that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . .

18 U.S.C. § 3582(c)(1)(A). This provision is commonly referred to as “compassionate release.”

*See, e.g., United States v. Escajeda*, 58 F.4th 184, 186 (5th Cir. 2023) (“We often refer to this

as ‘compassionate release’ because courts generally use it for prisoners with severe medical exigencies or infirmities.”).

#### B. Exhaustion of Administrative Remedies

Prior to the First Step Act, only the Director of the BOP could file a motion seeking compassionate release. *United States v. Jackson*, 27 F.4th 1088, 1089 (5th Cir. 2022); *see United States v. Franco*, 973 F.3d 465, 467 (5th Cir.) (“Prior to the passage of the First Step Act . . . courts lacked the power to adjudicate motions for compassionate release.”), *cert. denied*, 141 S. Ct. 920 (2020); *Tuozzo v. Shartle*, No. 13-4897, 2014 WL 806450, at \*2 (D.N.J. Feb. 27, 2014) (denying petitioner’s motion for compassionate release because no motion for his release was filed by the BOP). The First Step Act amended § 3582(c) by providing a defendant the means to appeal the BOP’s decision not to file a motion for compassionate release on the defendant’s behalf. *Jackson*, 27 F.4th at 1089; *United States v. Cantu*, 423 F. Supp. 3d 345, 347 (S.D. Tex. 2019); *United States v. Bell*, No. 3:93-CR-302-M, 2019 WL 1531859, at \*1 (N.D. Tex. Apr. 9, 2019). The plain language of the statute, however, makes it clear that the court may not grant a defendant’s motion for compassionate release unless the defendant has complied with the administrative exhaustion requirement. 18 U.S.C. § 3582(c)(1)(A); *United States v. Garrett*, 15 F.4th 335, 337 (5th Cir. 2021) (“[T]o file a proper motion for compassionate release in the district court, a prisoner must first exhaust the available administrative avenues.”); *Franco*, 973 F.3d at 467 (holding that the statutory requirement that a defendant file a request with the BOP before filing a motion for compassionate release in federal court “is *not* jurisdictional but that it *is* mandatory”); *United States v. Alam*, 960 F.3d 831, 833 (6th Cir. 2020) (“Even though [the] exhaustion requirement does not implicate [the court’s] subject-matter jurisdiction, it remains a

mandatory condition.”); *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (“[T]he exhaustion requirement . . . presents a glaring roadblock foreclosing compassionate release.”).

Thus, before seeking relief from the court, a defendant must first submit a request to the warden of her facility to move for compassionate release on her behalf and then either exhaust her administrative remedies or wait for the lapse of 30 days after the warden received the request. 18 U.S.C. § 3582(c)(1)(A); *Garrett*, 15 F.4th at 338 (“[A]n inmate has two routes by which he may exhaust his administrative remedies. Both begin with ‘requesting that the [BOP] bring a motion on the defendant’s behalf.’” (quoting *Franco*, 973 F.3d at 467)); *United States v. Harris*, 812 F. App’x 106, 107 (3d Cir. 2020); *United States v. Springer*, 820 F. App’x 788, 791 (10th Cir. 2020) (defendant “was required to request that the BOP file a compassionate-release motion on his behalf to initiate his administrative remedies” (citing *Raia*, 954 F.3d at 595)); *Alam*, 960 F.3d at 833-34; *United States v. Soliz*, No. 2:16-190-3, 2020 WL 2500127, at \*3 (S.D. Tex. May 14, 2020) (“§ 3582(c)(1)(A) does not provide this Court with the equitable authority to excuse [defendant’s] failure to exhaust his administrative remedies or to waive the 30-day waiting period.” (quoting *United States v. Reeves*, No. 18-00294, 2020 WL 1816496, at \*2 (W.D. La. Apr. 9, 2020))).

In this instance, Rhea is foreclosed from obtaining relief because she has not submitted a request for compassionate release based on the circumstances raised in her motion to the warden of the facility where she is housed. *United States v. Dodd*, No. 4:13-CR-182-SDJ, 2020 WL 7396527, at \*2 (E.D. Tex. Dec. 17, 2020) (stating that “[i]n order to exhaust her administrative remedies, a prisoner must first present to the BOP the same grounds warranting release that the prisoner urges in her motion”). Rhea admits that she did not submit a request for compassionate

release to the warden, checking a box on the preprinted motion that reads, “No, I did not submit a request for compassionate release to the warden.” Instead, she makes the uncorroborated statement, “I was given the packet and instructed to go straight to the courts.” Rhea, however, does not identify the individual who purportedly gave her this instruction and provides no support from prison officials or, indeed, from anyone, for the statement or the notion that she can bypass the administrative remedy requirement. Rhea gives no indication that she attempted to exhaust her administrative remedies, even informally, and there is no evidence before the court that she has sought relief from the warden or other BOP personnel. Thus, the court is without authority to waive or excuse the exhaustion of administrative remedies or the 30-day waiting period. *See Franco*, 973 F.3d at 468 (“Congress has commanded that a ‘court *may not* modify a term of imprisonment’ if a defendant has not filed a request with the BOP.”); *Alam*, 960 F.3d at 832 (“[B]ecause this exhaustion requirement serves valuable purposes (there is no other way to ensure an orderly processing of applications for early release) and because it is mandatory (there is no exception for some compassionate-release requests over others), we must enforce it.”); *United States v. Garcia*, No. CR 2:18-1337, 2020 WL 3000528, at \*3 (S.D. Tex. June 2, 2020) (“While the Court sympathizes with Defendant’s plight, because he has failed to comply with the exhaustion requirements under § 3582, his motion is not ripe for review, and the Court is without jurisdiction to grant it.”); *United States v. Garcia-Mora*, No. CR 18-00290-01, 2020 WL 2404912, at \*2 (W.D. La. May 12, 2020) (“Section 3582(c)(1)(A) does not provide [the court] with the equitable authority to excuse [the defendant’s] failure to exhaust his administrative remedies or to waive the 30-day waiting period.”); *United States v. Collins*, No. CR 04-50170-04, 2020 WL 1929844, at \*2 (W.D. La. Apr. 20, 2020); *see also Ross v. Blake*, 578 U.S. 632, 639

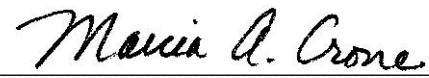
(2016) (“[J]udge-made exhaustion doctrines . . . remain amenable to judge-made exceptions,” whereas “mandatory exhaustion statutes . . . establish mandatory exhaustion regimes, foreclosing judicial discretion.”).

Therefore, at this time, the court does not have the authority to grant the relief Rhea requests.

III. Conclusion

In sum, Rhea has failed to satisfy her burden of showing the necessary circumstances to obtain relief under the statutory framework to which the court must adhere. There is no indication that she has exhausted her administrative remedies, which is a mandatory prerequisite for seeking compassionate release. Accordingly, Rhea’s *pro se* Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A) (Compassionate Release) (#407) is DISMISSED for failure to exhaust administrative remedies.

SIGNED at Beaumont, Texas, this 5th day of July, 2023.

  
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Marcia A. CRONE  
UNITED STATES DISTRICT JUDGE